

SEC93

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

U.S. SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

KIK INTERACTIVE INC.

Defendant.

Case No. 19-cv-5244 (AKH)

**DECLARATION OF BRENT MITCHELL IN SUPPORT OF  
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

BRENT MITCHELL, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a Senior Counsel with the Division of Enforcement of the United States Securities and Exchange Division (the "Commission"). I am submitting this Declaration in support of the Commission's Motion for Summary Judgment.

2. I make this Declaration based upon my personal knowledge of the events and records described herein and to summarize voluminous records pursuant to Federal Rule of Evidence 1006. To the best of my information and belief, each of the records I summarize were produced by or produced to Kik Interactive Inc. ("Kik") during the Commission's investigation of Kik or during the above-captioned litigation, and each of these records are, therefore, available to Kik.

**KIK'S SALE OF KIN PURSUANT TO ITS SAFT**

3. In connection with my summary of evidence relating to Kik's sale of Kin pursuant to its Simple Agreement for Future Tokens ("SAFT"), I have reviewed the following evidence, each of which was produced or otherwise created by Kik:

- a. Kik's August 6, 2019 Answer (ECF No. 22);
  - b. Kik's September 17, 2018 Responses to the Commission's Investigative Requests for Admission ("Inv. RFA") (Declaration of Laura D'Allaird ("D'Allaird Decl.") at Exhibit SEC1);
  - c. A chart listing SAFT participants (KIK000283) marked as Testimony Exhibit 132 during the investigation and as Deposition Exhibit 39 during the litigation, which Kik admits is a complete and accurate list of the people and entities who entered into SAFTs with Kik;
  - d. A chart listing SAFT participants marked as Testimony Exhibit 133 during the investigation and as Deposition Exhibit 40 during the litigation (D'Allaird Decl. Exhibit SEC53). This chart is a printout of KIK001187, a native Excel file which Kik admits is a complete and accurate list of the people and entities who entered into SAFTs with Kik, the amount of the purchase, and the date on which the SAFT was executed; and
  - e. The SAFT for an individual participant residing in or near San Francisco, California (KIK\_00018475), referred to below in paragraph 4(c)(iv).
4. Based upon my review of these records, I provide the following summary:
- a. Kik sold Kin to approximately 50 purchasers by entering into SAFTs and received more than \$49 million. Of those purchasers, 21 resided or had an address in the United States, and their purchases amounted to approximately \$39.3 million.
  - b. Kik entered into SAFTs between July 3 and September 11, 2017. Pursuant to those agreements, purchasers bought Kin in amounts that ranged from \$10,000 to \$15 million.

- c. The six largest SAFT participants all have postal addresses suggesting that they reside in the United States: (i) Pantera Capital Management of Menlo Park, California (\$15 million), (ii) Polychain Fund of San Francisco, California (\$6.5 million), (iii) Maple Ventures LLC of New York City, New York (\$4.5 million), (iv) an individual residing in or near San Francisco, California (\$2 million), (v) Novofam LLC of New York City, New York (\$2 million), and (vi) PB Digital of San Francisco, California (\$2 million).
- d. In addition, the SAFT participants included: (i) 11 purchasers who purchased Kin for amounts ranging from \$501,000 to \$1.999 million, (ii) 21 purchasers who purchased Kin for amounts ranging from \$100,000 to \$500,000, and (iii) 13 purchasers who purchased Kin for amounts ranging from \$10,000 to \$99,999.
- e. On September 11, 2017, Kik entered into SAFT agreements with 10 purchasers, including a \$1.2 million agreement with Blockchain Opportunity Fund LLC of Park Ridge, Illinois.

#### **KIK'S SALE OF KIN TO THE GENERAL PUBLIC**

5. In connection with my summary of evidence relating to Kik's sale of Kin to the general public, I have reviewed the following evidence, each of which was produced or otherwise created by Kik:

- a. Kik's August 6, 2019 Answer (ECF No. 22);
- b. Kik's September 17, 2018 Responses to the Commission's Investigative Requests for Admission ("Inv. RFA") (D'Allaird Decl. Exhibit SEC1);
- c. KIK001188, which Kik admits is a complete and accurate list of the approximately 10,000 people who purchased Kin in the public sale portion of

the Kin token offering (“public buyers”), with, among other information, Ether address, Kin, amount of Ether, amount in U.S. dollars, postal country, and passport country of those individuals;

- d. Investigative Testimony of Peter Heinke at 419:25-423:19 (D’Allaird Decl. Exhibit SEC10); and
- e. Investigative Testimony of Harrison Wang at 14:14-18 (D’Allaird Decl. Exhibit SEC73).

6. Based upon my review of these records, I provide the following summary:

- a. Approximately 10,000 non-duplicative purchasers bought Kin from Kik in the sale of Kin to the general public in exchange for a total of 168,732 Ether, which was then worth approximately \$49.2 million.
- b. The eight largest public buyers paid about \$1.553 million, \$1.462 million, \$1.160 million, \$970,231, \$871,393, \$686,144, \$640,424 and \$593,705 respectively.
- c. The public buyers also included (i) 48 purchasers who paid for Kin in amounts ranging from \$100,000 to \$500,000, (ii) 544 purchasers who paid for Kin in amounts ranging from \$10,000 to \$99,999, and (iii) 4,584 purchasers who paid for Kin in amounts ranging from \$1,000 to \$9,999.
- d. Of the money spent on Kin by all public buyers, a total amount of about \$7,938,264 was spent by buyers who paid at least \$500,000; a total amount of about \$16,298,405 was spent by buyers who paid at least \$100,000; a total amount of about \$31,369,147 was spent by buyers who paid at least \$10,000; and a total amount of about \$46,837,457 was spent by buyers who paid at least \$1,000.

- e. Of the money spent on Kin by all public buyers, a total amount of about \$1,926,056 – or about 3.95% of the public sale total -- was spent by buyers who paid less than \$1,000.
- f. Of the Kin bought by all public buyers, more than 50% of the Kin was purchased by buyers who paid more than \$32,000.
- g. In Kik's September 2017 sale of Kin to the general public, about 3,540 of the purchasers provided Kik with postal addresses located in the United States, social security numbers, and/or U.S. passports (the "U.S. Public Buyers"). Purchases by U.S. Public Buyers accounted for approximately \$16.8 million in Ether.
- h. The two largest U.S. Public Buyers paid about \$1.553 million and about \$970,231, respectively. The purchase of \$1.553 million in Kin – by Harrison Wang, an individual with a United States passport and postal address – was the largest single purchase during Kik's sale of Kin to the general public.
- i. In addition, the U.S. Public Buyers included: (i) 15 purchasers who paid for Kin in amounts ranging from \$100,000 to \$500,000, (ii) 207 purchasers who paid for Kin in amounts ranging from \$10,000 to \$99,999, and (iii) 1664 purchasers who paid for Kin in amounts ranging from \$1,000 to \$9,999.
- j. Of the money spent on Kin by U.S. Public Buyers, a total amount of about \$2,254,097 was spent by buyers who paid at least \$500,000; a total amount of about \$5,168,031 was spent by buyers who paid at least \$100,000; a total amount of about \$10,525,772 was spent by buyers who paid at least \$10,000; and a total amount of about \$16,219,917 was spent by buyers who paid at least \$1,000.

- k. Of the money spent on Kin by U.S. Public Buyers, a total amount of about \$677,612 – or about 4.01% of total received from US. Public Buyers -- was spent by U.S. Public Buyers who paid less than \$1,000.
- l. Of the money spent on Kin by U.S. Public Buyers, more than 50% of the Kin was purchased by buyers who paid more than \$24,000.

#### **KIK'S TOTAL SALE OF KIN**

7. In connection with my summary of evidence relating to Kik's total sale of Kin, I have reviewed the evidence discussed above.

- 8. Based upon my review of these records, I provide the following summary:
  - a. Approximately 10,000 non-duplicative purchasers bought Kin from Kik by entering into SAFTs or in the sale of Kin to the general public ("All Buyers") in exchange for consideration which was then worth about \$98,355,013.
  - b. Of the money spent on Kin by All Buyers, a total amount of about \$54,403,264 was spent by buyers who paid at least \$500,000; a total amount of about \$65,413,405 was spent by buyers who paid at least \$100,000; a total amount of about \$80,960,647 was spent by buyers who paid at least \$10,000; and a total amount of about \$96,428,957 was spent by buyers who paid at least \$1,000.
  - c. Of the money spent on Kin by All Buyers, a total amount of about \$1,926,056 – or about 1.96% of the entire amount raised in Kin offering -- was spent by buyers who paid less than \$1,000.
  - d. Of the money spent on Kin by All Buyers, more than 50% of the Kin was purchased by buyers who paid more than \$500,000.

## **KIK'S CONVERSION OF ETHER TO DOLLARS**

9. In connection with my summary of evidence relating to Kik's conversion of Ether received in exchange for Kin, I have reviewed the following evidence:

- a. Monthly bank statements for the periods ending September 29, 2017 through March, 30 2018, produced to the Commission pursuant to subpoena (Deposition Exhibit 263);
- b. Cumberland Mining & Materials LLC's public website (<https://cumberland.io/>);
- c. Investigative Testimony of Tanner Philp at 257:22-258:6 (D'Allaird Decl. SEC14); and
- d. Kik Interactive Rule 30(b)(6) Deposition at 32:15-36:23 (D'Allaird Decl. Ex. SEC6).

10. Based upon my review of these records, I provide the following summary:

- a. Cumberland Mining & Materials, LLC is a "specialized cryptoasset trading company," which Kik hired to convert to United States dollars the Ether Kik received in exchange for the Kin Kik sold to the general public in the September 2017.
- b. Cumberland Mining deposited the United States dollars it received in exchange for Kik's Ether into Kik's account at Silvergate Bank, a financial institution headquartered in California.
- c. From September 27, 2017 through September 29, 2017, Kik's account at Silvergate Bank received transfers from Cumberland Mining & Minerals LLC that total \$11,786,512.50.



- d. From September 27, 2017 through December 29, 2017, Kik's account at Silvergate Bank received transfers from Cumberland Mining & Minerals LLC that total \$50,007,435.68.
- e. From September 27, 2017 through March 28, 2018, Kik's account at Silvergate Bank received transfers from Cumberland Mining & Materials LLC that total \$59,020,442.69.
- f. Kik also still holds 1,800 Ether it received in exchange for the Kin that Kik sold to the general public in the September 2017.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 19, 2020

/s/ Brent Mitchell  
Brent Mitchell  
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Division of Enforcement  
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Washington, DC 20549